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SB 323

**SB 323 Allow Over-Ride of Court Decisions Invalidating Statute**  
**SB322 Revise Venue for Court Actions against Legislature** (Sen. Joe Balyeat)

The US Constitution, and the Montana Constitution as well, have attempted to set up a limited government; based upon the notion of checks and balances. That government would be divided into 3 branches – legislative, executive, and judicial. And that, with no branch having absolute power, we might avoid the old plague – *power corrupts and absolute power corrupts absolutely*.

But it was the distinct fear of our founders, that an unrestrained judiciary was perhaps the biggest danger. As Thomas Jefferson said, “The germ of destruction of our nation is in the power of the judiciary... working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief over the field of jurisdiction, until all shall render powerless the checks of one branch over the other and will become as venal and oppressive as the government from which we separated”.

Jefferson saw it clearly, despite the old saw about “checks & balances”, the fact is there is no check or balance on the Court. If the legislature does something stupid the Governor can veto it, or the Court can declare it unconstitutional. If the Governor does something stupid, the legislature can over-ride his veto, or the Court can rule it unconstitutional. But if the Court, God forbid, does something stupid (and I did say “IF”), there is no check & balance in place – not even the combined power of the legislative and executive branches together can over-rule the Court.

Particularly after 1803 in *Marbury vs. Madison*, when courts garnered to themselves the power to overturn legislative and executive actions on the basis of Constitutionality; there have been many legal scholars, on both the left and the right, who have warned of the dangers of judicial omnipotence; because they, as did Jefferson, feared it emasculated the checks & balances of our three branch government..

So this is why we need to consider these bills I bring before the committee today. If the court without self-restraint starts legislating from the bench; then the people must enact some sort of restraint on them. Otherwise, what you have is not just another legislative body, but a super legislature – all of the power and none of the constraints which MT’s citizens have placed on its true legislature – a citizen legislature which must live and work in the real world under the laws it passes.

And I need to add, this super legislature is so powerful it can even pass laws retroactively – with true Orwellian consequences. If we legislators change laws, those changes only apply prospectively, from that date onward. But when the Supremes do it, that change goes back and invalidates elections and actions of the people which were perfectly legal based on case law at the time.

**SB323 Enact a judicial over-ride** – If the legislature can be over-ridden (by a Governor’s veto; or a court-ruling), and the Governor can be over-ridden (by 2/3 of the legislature; or a court-ruling); why should the judiciary be the only branch of government allowed to make dictatorial laws with no checks and balances? This bill doesn’t even go far enough to create a level playing field, it simply allows the legislative branch and executive branch together to over-ride the judiciary with a combined veto – 2/3 of each legislative chamber PLUS the governor’s concurrence. Constitutional referendum. Requires voter approval.

**SB322 Require that any lawsuits against the legislature be brought in the district court of the House Speaker or Senate President.** This will ensure that plaintiffs can’t bring lawsuits before inside-the-beltway Helena judges who are not representative of average Montana taxpayers. If power to overturn MT’s legislature must be vested in a single judge – at least that judge should come from a part of the state which perhaps best represents a cross-section of MT’s population. The judicial districts containing the current Senate President or House Speaker might best reflect that perspective. Statutory Referendum

I also need to point out that one of these bills is a constitutional referendum and the other a statutory referendum; and that I’m really asking this committee to give the voters of Montana a chance to vote on these reforms; and I trust MT voters to do the right thing.

Before closing, I need to quickly mention how trying to enact Court reform relates to jobs. I think few people understand how a runaway Court so seriously hurts MT’s economy and wage growth. Businesses take their jobs

and leave MT when our Court over-reaches its authority. You don't have to believe me. My colleagues in this legislature know my attention to economic research and my interest in attempting to improve MT's languishing wages. One international study by economist James Gwartney and two other international researchers is entitled ***"Economic Growth and the Rule of Law: Cross Country Evidence"***. This study concludes that a consistent rule of law (rather than inconsistent rule of lawyers) is one of the strongest factors leading to economic growth.

In addition to the Gwartney study, I invite the committee to consider this statement by Andrew Morriss, associate dean emeritus of one of the finest law schools in America -- Case Western in Ohio: **"... in the recent decisions of the Montana Supreme Court is an unprecedented power grab... that threatens every Montanan's basic rights. If not reversed, these decisions will drive jobs and investment out of Montana..."**

. In summary:

The question before us is this -- whether we as Montanans pass on to our children the same system of limited 3 branch government with checks and balances that was handed down to us from our forefathers; or whether Montana continues down the road of an omnipotent judicial oligarchy with an executive branch and legislature relegated to meaningless bureaucratic trivialism.

Mr. Chairman, members of the Committee, I reserve the right to close.